

THOMAS P. O'BRIEN  
 United States Attorney  
 CHRISTINE C. EWELL  
 Assistant United States Attorney  
 Chief, Criminal Division  
 CHRISTOPHER BRUNWIN  
 Assistant United States Attorney  
 Deputy Chief, Violent & Organized Crime Section  
 STEVEN R. WELK  
 California State Bar No. 149883  
 Assistant United States Attorney  
 Chief, Asset Forfeiture Section  
 FRANK D. KORTUM  
 California State Bar No. 110984  
 Assistant United States Attorney  
 Asset Forfeiture Section  
 1400 United States Courthouse  
 312 North Spring Street  
 Los Angeles, California 90012  
 Telephone: (213) 894-6166/5710  
 Facsimile: (213) 894-7177  
 E-mail: Steven.Welk@usdoj.gov  
 E-mail: Frank.Kortum@usdoj.gov

Attorneys for Plaintiff  
 United States of America

UNITED STATES DISTRICT COURT  
 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
 WESTERN DIVISION

UNITED STATES OF AMERICA,	)	CR 08-1201 FMC
	)	
Plaintiff,	)	<b>GOVERNMENT'S APPLICATION FOR</b>
	)	<b>ENTRY OF PRELIMINARY ORDER OF</b>
v.	)	<b>FORFEITURE AS TO REGISTERED</b>
	)	<b>TRADEMARKS, PURSUANT TO GUILTY</b>
RUBEN CAVAZOS,	)	<b>PLEA OF RUBEN CAVAZOS;</b>
aka "Doc", et al.,	)	<b>MEMORANDUM OF POINTS AND</b>
	)	<b>AUTHORITIES; DECLARATION OF</b>
Defendants.	)	<b>STEVEN R. WELK AND EXHIBITS</b>

No Hearing Required

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1 Plaintiff United States of America hereby applies for the  
2 entry of the proposed Preliminary Order of Forfeiture of  
3 Registered Trademarks lodged contemporaneously herewith pursuant  
4 to Fed. R. Crim. P. 32.2(b) and defendant Ruben Cavazos's entry  
5 of a plea of guilty to Count One of the Indictment. This  
6 application, which deals solely with the registered trademarks as  
7 to which forfeiture is sought (described in detail below) is  
8 supported by defendant's guilty plea, the factual basis stated  
9 during defendant's plea proceeding, and the matters set forth in  
10 the accompanying Memorandum of Points and Authorities and  
11 Declaration of Steven R. Welk and Exhibits.<sup>1</sup>

12 Government counsel contacted Angel Navarro, counsel for  
13 defendant RUBEN CABAZOS, to inform him of this filing, on June  
14 26, 2009. Undersigned counsel emailed a final draft of the  
15 accompanying Memorandum of Points and Authorities and the  
16 proposed Preliminary Order of Forfeiture of Registered Trademarks  
17 to Mr. Navarro on June 26, 2009, requesting that he respond  
18 promptly with comments or objections to the draft. Mr. Navarro

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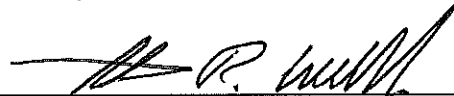
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27 <sup>1</sup> The government anticipates that it will seek a separate  
28 Preliminary Order of Forfeiture prior to defendant's sentencing  
for other assets seized from defendant.

1 | responded on June 26, 2009 and informed government counsel that  
2 | neither he nor his client has no objection to the entry of the  
3 | proposed Preliminary Order of Forfeiture of Registered  
4 | Trademarks. See Welk Declaration at ¶12.

5 | DATED: June 29, 2009

Respectfully submitted,

6 |  
7 | THOMAS P. O'BRIEN  
8 | United States Attorney  
9 | CHRISTINE C. EWELL  
10 | Assistant United States Attorney  
11 | Chief, Criminal Division

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13 |   
14 | STEVEN R. WELK  
15 | Assistant United States Attorney  
16 | Chief, Asset Forfeiture Section

17 | Attorneys for Plaintiff  
18 | UNITED STATES OF AMERICA  
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**MEMORANDUM OF POINTS AND AUTHORITIES****I. INTRODUCTION**

On January 23, 2009, defendant Ruben Cavazos ("defendant") entered a plea of guilty to Count One of the Indictment, alleging violations of 18 U.S.C. § 1962(d). Defendant is scheduled to be sentenced on February 22, 2010. In Count Eighty-Five of the Indictment, the government notified defendant that the government would seek the forfeiture of certain property upon his conviction of one or both of Counts One and/or Two. As part of his guilty plea, defendant agreed to the forfeiture of all right, title and interest in certain assets acquired or maintained by him as a result of his violation of 18 U.S.C. § 1962, including those listed immediately below (the "Mongols Registered Trademarks" or "marks"), and admitted that the marks were subject to forfeiture to the United States:

1. The trademark assigned Registration No. 3076731 (serial no. 78610213), issued to Mongol Nation on or about April 4, 2006, purportedly for use in commerce in connection with promoting the interests of persons interested in the recreation of riding motorcycles.
2. The trademark assigned Registration No. 2916965 (serial no. 76532713), issued to Mongol Nation on or about January 11, 2005, purportedly for use in commerce in connection with promoting the interests of persons interested in the recreation of riding motorcycles.

Pursuant to Rule 32.2(b), the government now applies for the entry of the proposed Preliminary Order of Forfeiture of Registered Trademarks (lodged contemporaneously herewith). The government also requests that the forfeiture of the specific property be stated orally at defendant's sentencing and set forth in defendant's Judgment and Commitment Order.

1 **II. ARGUMENT**

2 **A. The Nexus Between Defendant's Crimes and the Specific**  
 3 **Property to be Forfeited Has Been Established by**  
 4 **Defendant's Guilty Plea**

5 Rule 32.2 of the Federal Rules of Criminal Procedure  
 6 provides, in pertinent part:

7 As soon as practicable after entering a guilty verdict  
 8 or accepting a plea of guilty or nolo contendere on any  
 9 count in an indictment or information with regard to  
 10 which criminal forfeiture is sought, the court must  
 11 determine whether the government has established the  
 12 requisite nexus between the property and the offense.

13 Fed. R. Crim. P. 32.2(b)(1). The Advisory Committee Notes for  
 14 this provision explain that for the preliminary order of  
 15 forfeiture, the court must determine "if the property was subject  
 16 to forfeiture under the applicable statute, e.g., whether the  
 17 property represented the proceeds of the offense . . . ."  
 18 Advisory Committee Notes to Rule 32.2, subdivision (a) (2000  
 19 Adoption). The standard of proof regarding the forfeitability of  
 20 property in a criminal case, including RICO cases, is  
 21 preponderance of the evidence. See United States v. Najjar, 300  
 22 F.3d 466, 485-86 (4<sup>th</sup> Cir. 2002) (RICO); United States v.  
 23 Shryock, 342 F.3d 948, 991 (9<sup>th</sup> Cir. 2003) (following Najjar);  
 24 United States v. DeFries, 129 F.3d 1293, 1312 (D.C. Cir. 1997)  
 25 (RICO); United States v. Hernandez-Escarsega, 886 F.2d 1560,  
 26 1576-77 (9<sup>th</sup> Cir. 1989) (interpreting identical language in 21  
 27 U.S.C. § 853); United States v. Bieri, 21 F.3d 819 (8<sup>th</sup> Cir.  
 28 1994) (§ 853).

29 Thus, the only question before the Court in connection with  
 30 the requested entry of the proposed Preliminary Order is whether  
 31 the evidence before the Court is enough to establish by a

1 preponderance of the evidence that there is a nexus between the  
2 Mongols Registered Trademarks and the offense(s) that are alleged  
3 to render them forfeitable. See Rule 32.2(b)(1), quoted above.

4 The existence or extent of third-party interests in the  
5 marks are determined after the entry of the preliminary order.  
6 See United States v. Lazarenko, 476 F.3d 642, 648 (9<sup>th</sup> Cir. 2007)  
7 ("Upon a finding that the property involved is subject to  
8 forfeiture, a court must promptly enter a preliminary order of  
9 forfeiture without regard to a third party's interests in the  
10 property."). The preliminary order should be entered promptly in  
11 order to avoid unnecessary delay in the forfeiture process and  
12 resolve potential third party rights. United States v. Yeje-  
13 Cabrera, 430 F.3d 1, 15 (1<sup>st</sup> Cir. 2005). The defendant need not  
14 be present when the preliminary order is entered. United States  
15 v. Segal, 495 F.3d 826, 837-38 (7<sup>th</sup> Cir. 2007).

16 Forfeiture in a RICO case is mandatory where property is  
17 determined to be within the scope of § 1963(a). Alexander v.  
18 United States, 509 U.S. 544, 562 (1993) ("a RICO conviction  
19 subjects the violator not only to traditional, thought stringent,  
20 criminal fines and prison terms, but also mandatory forfeiture  
21 under § 1963"); United States v. Nava, 404 F.3d 1119, 1124 (9<sup>th</sup>  
22 Cir. 2005). The scope of that forfeiture authority is  
23 extraordinarily broad. See 18 U.S.C. § 1963(b) ("Property  
24 subject to criminal forfeiture under this section includes - . .  
25 . tangible and intangible personal property, including rights,  
26 privileges, interests, claims, and securities"); Russello v.  
27 United States, 464 U.S. 16, 26 (1983) (Congress enacted RICO "to  
28 provide new weapons of unprecedented scope for an assault upon

1 organized crime and its economic roots"); United States v.  
2 Busher, 817 F.2d 1409, 1413 (9<sup>th</sup> Cir. 1987) (the forfeiture  
3 provisions of §1963 are "purposely broad . . .[,] "designed to  
4 totally separate a racketeer from the enterprise he operates");  
5 United States v. Angiulo, 897 F.2d 1169, 1211 (1<sup>st</sup> Cir. 1990)  
6 ("any interests in an enterprise, including the enterprise  
7 itself, are subject to forfeiture in their entirety, regardless  
8 of whether some portion of the enterprise is not tainted by the  
9 racketeering activity"); United States v. Segal, 432 F.3d 767,  
10 779 (7<sup>th</sup> Cir. 2005) (if a business is forfeited, so are all of  
11 its assets, including any subsidiary business that is wholly  
12 owned by the forfeited business; there need not be an independent  
13 basis for the forfeiture of the wholly-owned subsidiary).

14 The government is not required to establish the defendant's  
15 ownership of the property either to seize it or to obtain a  
16 preliminary order of forfeiture, and third parties are prohibited  
17 from intervening in the criminal case, and cannot complain that  
18 they have to wait for the ancillary proceeding to assert their  
19 rights. Almeida v. United States, 459 F.3d 377, 381 (2d Cir.  
20 2006); 18 U.S.C. § 1963(i). As explained in the Advisory  
21 Committee Notes to Rule 32.2 (2000), the Rule was revised with  
22 the intent to eliminate confusion over whether the extent of the  
23 defendant's ownership interest should be determined by the finder  
24 of fact. The new rule clarified that the only question upon  
25 conviction or a guilty plea is whether there is a nexus between  
26 the violation of which the defendant has been convicted (or to  
27 which he has pled) and the property sought - if there is, the  
28 court should enter an order forfeiting "whatever interest a

1 defendant may have in the property without having to determine  
2 exactly what that interest is."<sup>2</sup> A defendant cannot object to  
3 the entry of a preliminary order on the ground that the property  
4 at issue does not belong to him. United States v. Schlesinger,  
5 396 F.Supp.2d 267, 273 (E.D.N.Y. 2005).

6 Here, defendant (and numerous others) have pled guilty to  
7 Count One of the Indictment. Defendant has admitted as part of  
8 his plea (and the undisputed evidence conclusively confirms) that  
9 the Mongols Registered Trademarks were acquired and maintained by  
10 defendant during and in the course of the operation of the RICO  
11 enterprise described in the Indictment, rendering them subject to  
12 forfeiture pursuant to 18 U.S.C. § 1963(a)(1). His admissions  
13 also establish that the Mongols Registered Trademarks afforded a  
14 source of influence over the RICO enterprise that defendant  
15 admits he established, operated, controlled, conducted and  
16 participated in the conduct of, rendering the marks subject to  
17 forfeiture pursuant to 18 U.S.C. § 1963(a)(2) as well.<sup>3</sup> The  
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20 <sup>2</sup> Criminal forfeiture is part of the defendant's sentence,  
21 so it is available only if the defendant is convicted of the  
22 underlying substantive offense. Lazarenko, supra. If the  
23 defendant is convicted, his interest in the property must be  
24 forfeited regardless of what that interest is, so it is not  
25 necessary to determine the extent of the interest. The only  
26 issues left to be determined concerning ownership are those of  
27 non-defendant third parties, whose interests are determined in  
28 the ancillary process. Only after that process is complete does  
the government obtain a Final Order of Forfeiture.

26 <sup>3</sup> The defendant's admissions are more than sufficient to  
27 establish the forfeitability of the marks, but the Court is not  
28 required to find a factual basis for the defendant's agreement to  
criminal forfeiture. See United States v. Ken Int'l Co., Ltd.,  
113 F.3d 1243, 1997 WL 229114, at \*3 (9<sup>th</sup> Cir. 1997).



1 nexus requirement of Rule 32.2(b) having been satisfied, the  
2 proposed Preliminary Order should be entered.

3 **B. The Mechanics of the Criminal Forfeiture of the Mongols**  
4 **Registered Trademarks**

5 The Preliminary Order of Forfeiture becomes final as to the  
6 defendant at the time of sentencing (or before sentencing if, as  
7 here, defendant consents). Rule 32.2(b)(3). Following entry of  
8 the requested Preliminary Order, the second phase of the  
9 forfeiture proceedings may begin, to determine whether any third  
10 party rights may exist in the Mongols Registered Trademarks.  
11 Fed. R. Crim. P. 32.2(c)(1); 18 U.S.C. § 1963(1).

12 Accordingly, the government respectfully requests that the  
13 Court enter the proposed Preliminary Order of Forfeiture lodged  
14 contemporaneously herewith, authorizing the government to seize  
15 the property subject to forfeiture (to the extent it has not  
16 already done so) and to commence proceedings governing  
17 third-party rights. Fed. R. Crim. P. 32.2(b)(3). The government  
18 will publish notice generally and give direct notice of the  
19 Preliminary Order to the sole known potential third-party  
20 claimant, Mongols Nation Motorcycle Club, Inc. Following such  
21 notification and completion of any necessary ancillary  
22 proceedings, the government will submit, as appropriate, a final  
23 order of forfeiture pursuant to Fed. R. Crim. P. 32.2(c).

24 **C. There Is No Need To Delay the Entry of the Requested**  
25 **Preliminary Order of Forfeiture**

26 The fact that the criminal case is still ongoing is no  
27 reason to delay the forfeiture proceedings concerning the Mongols  
28 Registered Trademarks. For the reasons explained above, the  
bases for forfeiture of the marks have been established. Further

1 proceedings concerning the guilt of the remaining defendants will  
2 have no effect on the forfeitability of the marks.<sup>4</sup> Defendant  
3 was the original registrant and owner of the marks until October  
4 14, 2008, either as the National President of Mongols Nation (an  
5 unincorporated association), or as the owner/manager of Shotgun  
6 Productions, LLC. See exhibits A through F to the Welk  
7 Declaration. These facts establish that the marks were acquired  
8 and maintained by defendant as part of the RICO enterprise.  
9 Moreover, defendant's admissions establish that the marks were  
10 property or rights that afforded a source of influence over the  
11 RICO enterprise, establishing a separate basis for forfeiture.

12 The marks were temporarily assigned back to Mongol Nation  
13 (an unincorporated association) in October 2008, at which time  
14 Hector Gonzalez, another defendant in this case, was the National  
15 President. See exhibits B, D and F to the Welk Decl. However,  
16 Mongol Nation (through Gonzalez) subsequently transferred the  
17 marks in January 2009 (in direct violation of this Court's  
18 restraining order of October 22, 2008) to a newly-formed  
19 corporation called Mongols Nation Motorcycle Club, Inc.  
20 ("Mongols, Inc."), which is the current owner of the marks. See  
21 exhibits B, F and H to the Welk Decl. The President of Mongols,  
22 Inc., Martin Guevara, is the current National President of the  
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26 <sup>4</sup> Even in the unlikely event that some of the remaining  
27 RICO defendants are acquitted, the nexus between the marks and  
28 the RICO enterprise which has already been proven by the pleas  
taken to date cannot be undone, and none of the individual  
defendants have any ownership rights in the marks in any event.

1 Mongols (see exhibit H to Welk Decl.), and no other third party  
2 appears to have standing to contest the forfeiture of the marks.<sup>5</sup>

3 If Gonzalez had retained control over the marks in his  
4 capacity of National President of Mongol Nation (the  
5 unincorporated association), it is possible that his status as a  
6 defendant in this case might have interfered with his ability to  
7 defend against the forfeiture of the marks in an ancillary  
8 proceeding on behalf of the unincorporated association. However,  
9 since Gonzalez, as National President of Mongol Nation (an  
10 unincorporated association) opted to assign those rights in their  
11 entirety to a non-defendant third party, neither he nor the  
12 unincorporated association he represented at the time of the  
13 transfer has any ownership or other rights in the marks. In  
14 other words, according to the clear chain of title that the  
15 Mongols themselves established, the only "person" with the right  
16 to claim an interest in the marks in the ancillary proceeding is  
17 Mongols, Inc. The entry of the proposed Preliminary Order of  
18 Forfeiture will give Mongols, Inc. the opportunity to present its  
19 arguments as to why the marks should not be forfeited, something

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23 <sup>5</sup> The contemptuous act of transferring and assigning the  
24 registered marks to Mongols, Inc. in the face of this Court's  
25 order prohibiting it arguably makes the transfer/assignment  
26 voidable by the Court, but the government is unlikely to request  
27 such a remedy since the transfer (1) deprives the unincorporated  
28 association of standing to make an ancillary claim, since it  
voluntarily assigned its entire interest in the marks to Mongols,  
Inc., and is therefore estopped from making an ownership claim in  
the ancillary proceeding; and (2) almost certainly makes it  
impossible as a matter of law for Mongols, Inc. to prevail in an  
ancillary proceeding on an innocent owner claim.

1 it is statutorily prohibited from doing prior to the entry of  
2 such an order.<sup>6</sup>

3 Finally, as the Court knows very well, the government's  
4 efforts to forfeit the Mongols Registered Trademarks have been  
5 the target of two separate collateral attacks so far (one of them  
6 by Mongols, Inc.). Moving forward with the forfeiture  
7 proceedings with respect to the marks will prevent future  
8 collateral attacks and allow the forfeiture proceedings with  
9 respect to the marks to be concluded.

### 10 **III. FORFEITURE MUST BE PRONOUNCED AT SENTENCING**

11 At sentencing, pursuant to Rule 32.2(b)(3) of the Federal  
12 Rules of Criminal Procedure, the "order of forfeiture becomes  
13 final as to the defendant and shall be made a part of the  
14 sentence and included in the judgment."

15 The Court must pronounce the forfeiture conditions orally as  
16 part of the sentence imposed on the defendant, and must include  
17 the forfeiture in the judgment and commitment order. See United  
18 States v. Gaviria, 116 F.3d 1498, 1530 (D.C. Cir. 1997)  
19 (forfeiture portion of the defendant's sentence must be announced  
20 in his presence pursuant to Fed. R. Crim. P. 43(a)). The  
21 government recommends the following language be read to the  
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23 <sup>6</sup> See 18 U.S.C. § 1963(i):

24 Except as provided in subsection (1) [governing third-  
25 party ancillary claims], no party claiming an interest  
26 in property subject to forfeiture under this section  
may -

27 (1) intervene in a trial or appeal of a criminal case  
28 involving the forfeiture of such property under this  
section . . . .

1 defendant and modified as necessary for inclusion in the judgment  
2 and commitment order at the time of his sentencing:

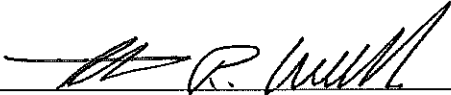
3 Pursuant to 18 U.S.C. § 1963 and Count Eighty-Five of  
4 the Indictment, the defendant has forfeited all of his  
5 right, title, and interest in the Mongols Registered  
Trademarks, more particularly described in the  
Preliminary Order of Forfeiture entered on [date].

6 IV. CONCLUSION

7 For the foregoing reasons, the government respectfully  
8 requests that the Court forthwith enter the proposed Preliminary  
9 Order of Forfeiture lodged herewith.

10 DATED: June 29, 2009

11 THOMAS P. O'BRIEN  
United States Attorney  
12 CHRISTINE C. EWELL  
Assistant United States Attorney  
13 Chief, Criminal Division  
CHRISTOPHER BRUNWIN  
14 Assistant United States Attorney  
Deputy Chief, Violent & Organized  
15 Crime Section

16   
17 STEVEN R. WELK  
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FRANK D. KORTUM  
19 Assistant United States Attorney

20 Attorneys for Plaintiff  
UNITED STATES OF AMERICA  
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